

SPECIAL CIVIL APPLICATION No 10221 of 1998

Hon'ble MR.JUSTICE A.R.DAVE

[illegible][illegible]

Versus

Appearance:

MR PG DESAI, GOVERNMENT PLEADER for Respondent No. 1

Date of decision: 23/12/1999

ORAL JUDGEMENT

Rule. Learned Government Pleader Shri Prashant G. Desai waives service of rule. At the request of the learned advocates, the matter is finally heard today.

Learned Senior Advocate Shri N.D. Nanavati appears for the petitioners and learned Addl. Advocate General Shri S.N. Shelat appears for the respondent.

Sr. Advocate Shri Nanavati has submitted that the impugned order dated 9.10.98 was passed by the respondent without affording any hearing to the present petitioners. The impugned order adversely affects the petitioners and therefore in his submission, the petitioners ought to have been heard before passing the said order.

Learned Addl. Advocate General Shri S.N. Shelat has to fairly concede the fact that the impugned order was passed without hearing the present petitioners and by the impugned order, orders dated 10.8.98 and 13.7.98 passed earlier, whereby certain rights of the present petitioners were determined, were quashed and set aside by the respondent.

Looking to the facts stated hereinabove and the submissions made by the learned advocates it is absolutely clear that the impugned order was passed without hearing the petitioners though by the impugned order some rights of the petitioners were adversely affected.

In the circumstances, the impugned order cannot be sustained for the reason that it has been passed in violation of the principles of natural justice. Before passing the impugned order, the respondent ought to have heard the petitioners but as he had not heard the petitioners, the impugned order dated 9.10.98 deserves to be quashed and set aside.

It would be open to the respondent to pass a fresh order after hearing the petitioners and other concerned persons who might have raised objections against the orders dated 10.8.98 and 13.7.98 passed by the respondent at an earlier point of time. It has been also brought to the notice of this court that one Shri Dhirubhai Basiya had objected to the orders dated 10.8.98 and 13.7.98 passed by the respondent at an earlier point of time and therefore in view of the objection raised by Shri Basiya, the impugned order had been passed. If the respondent thinks it proper, he may also hear Shri Basiya while passing a fresh order. Needless to say that if the

respondent decides to pass a fresh order, he will consider all contentions which might be raised before him by the petitioners before passing a fresh order.

Looking to the above-referred facts, in my opinion, the respondent could not have passed the impugned order dated 9.10.98 without affording any hearing to the present petitioners. In the circumstances, the impugned order is quashed and set aside and the petition is allowed. Rule is made absolute with no order as to costs.

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